

Message Text

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63

ACTION OPIC-12

INFO OCT-01 ARA-16 ISO-00 AID-20 CIAE-00 COME-00 EB-11

FRB-03 INR-11 NSAE-00 TRSE-00 XMB-07 SP-03 CIEP-03

LAB-06 SIL-01 OMB-01 L-03 /098 W

----- 091728

R 201613Z SEP 74

FM AMEMBASSY LIMA

TO SECSTATE WASHDC 2005

INFO AMEMBASSY BOGOTA

AMEMBASSY CARACAS

AMEMBASSY LA PAZ

AMEMBASSY QUITO

AMEMBASSY SANTIAGO

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DEPARTMENT FOR OPIC

E.O. 11652: N/A

TAGS: ECON, ECIN, EINV, CO, VE, EC, CI, PE

SUBJECT: ANDEAN PACT: ARTICLE 51 IN ANDEAN FOREIGN
INVESTMENT CODE

REF: TELECON HARRY MORGAN, OPIC, TO REGIONAL INTEGRATION
OFFICER FULLMER SEPTEMBER 19

1. ONLY NOTEWORTH RECENT DEVELOPMENT ON ARBITRATION AND
SUBROGATION ISSUE IS STATMENT BY CHILEAN DELEGATE PEDRO
CORREA AT CLOSED-DOOR TECHNICAL LEVEL MEETING IN LIMA
JULY 22 IN WHICH HE MADE POINT-BY-POINT COMPARISON BETWEEN
DECISION 24 AND CHILEAN DECREE-LAW 600. COPIES OF TRANS-
CRIPTION OF TAPED PRESENTATION BEING POUCHED TO OPIC,
ARA/ECP AND EMBMASSY SANTIAGO. REGARDING ARTICLE 51, CORREA
SIMPLY STATED THAT THIS PROVISION WILL SHORTLY BE INCORPORATED
INTO CHILEAN LEGISLATION. THIS COINCIDES WITH COMMENT MADE
BY RAUL SAEZ TO REGIONAL INTEGRATION OFFICER IN LATE JUNE.

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2. WITH EVEN CHILEANS IN FAVOR OF ARTICLE 51, PROSPECTS FOR ANY MODIFICATION ARE REMOTE. REGARDING LEGISLATIVE HISTORY, AN EARLY DRAFT OF DECISION 24, DATED OCTOBER 20, 1970, CONTAINED THE EXACT TEXT OF WHAT LATER BECAME ARTICLE 51, BUT WITHOUT THE FOLLOWING PART AT END OF FIRST PARAGRAPH, "... OR ALLOW THE SUBROGATION BY STATES TO THE RIGHTS AND ACTIONS OF THEIR NATIONAL INVESTORS." THIS WORDING WAS LATER ADDED, REPORTEDLY ON SUGGESTION OF PERU.

3. IN VIEW OF CURRENT CONTROVERSY OVER CHILEAN FOREIGN INVESTMENT LAW, REOPENING DISCUSSIONS WITH JUNTA OVER INTERPRETATION OF ARTICLE 51 WOULD BE COUNTERPRODUCTIVE. IN ANY CASE, JUNTA INTERPRETATION WOULD HAVE TO REFLECT CONSENSUS OF MEMBER GOVERNMENTS. IF ISSUE OF INTERPRETATION IS BE BE PURSUED AT ALL, IT SHOULD BE DONE AT NATIONAL LEVEL WITH MEMBER COUNTRIES.
DEAN

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Message Attributes

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